of the appellant the legislature by section 186A of the Criminal Procedure Code, which section came into operation on January 1, 1977, had expressly taken away the right of an accused person at his trial to make an unsworn statement from the dock. In our opinion when the trial of the appellant commenced in March 1978 the procedural provisions of section 186A governed the trial.

Another contention advanced on behalf of the appellant is that if the present section 181(2) and section 186A had retrospective effect so as to deprive the appellant of his right to make an unsworn statement from the dock or to remain silent, rights which accrued to him when he was first charged on December 13, 1976, then these two statutory provisions are void as being repugnant to Article 7 of the Malaysian Federal Constitution which is law in Singapore by virtue of the Republic of Singapore Independence Act, 1965.

Article 7 of the Malaysian Federal Constitution reads: —

"7. Protection against retrospective criminal laws and repeated trials.

(1) No person shall be punished for an act or omission which was not punishable by law when it was done or made, and no person shall suffer greater punishment for an offence than was prescribed by law at the time it was committed.

(2) A person who has been acquitted or convicted of an offence shall not be tried again for the same offence except where the conviction or acquittal has been quashed and a retrial ordered by a court superior to that by which he was acquitted or convicted."

Having regard to the opinion we have expressed on the first contention of the appellant this contention must also fail. In any event these two new sections plainly do not contravene the provisions of Article 7.

Although the Petition of Appeal raises numerous grounds of appeal which are related to the evidence before the trial judges and their verdict of guilty, these grounds have not been seriously pressed in argument at the hearing of the appeal. Nevertheless, we have gone through the entire Record of Appeal with considerable care and are satisfied that the evidence was overwhelming against the appellant. The evidence disclosed that the appellant intentionally and deliberately inflicted the fatal injuries on two unarmed persons. There were independent eye-witnesses to these brutal killings whose evidence the trial judges accepted. The trial judges rejected the appellant's defence that he was not aware that he had a bearing scraper in his hand and that the injuries he inflicted were accidental.

Accordingly, the appeal is dismissed.

Appeal dismissed.

Solicitors: *Amarjit, Rubin & Partners.*

U.N. PANDEY v. HOTEL MARCO POLO PTE. LTD.

[O.C.J. (Sinnathuray J.) March 29 & April 9, 1979]

[Singapore — Civil Suit No. 495 of 1977]

Evidence — Burden of proof — Civil cases — Party must prove case before burden shifts — Balance of probabilities in civil case.

Practice and Procedure — No case to answer — Saving of costs and time.

In civil cases, as much as in criminal cases, a party must prove his case before the burden of proof shifts to the other side. In a criminal case the prosecution's burden is a heavy one. In a civil case, it is on a balance of probabilities. But the proof is that the balance must be tilted by the plaintiff before the defendant makes his case.

Held: it would be a desirable practice in our courts to allow a submission of no case to answer at the end of the plaintiff's case, without putting the defendant to his election, whether to call evidence or not, if his submission fails. Such a practice will ensure not only that there is a thorough preparation of the case before trial, but also a careful presentation of it at the hearing. Altogether the practice will bring about a saving of costs for the parties.

Case referred to:-

(1) *Storey* v. *Storey* [1961] P. 63 C.A.

CIVIL SUIT.

J.B. Jeyaretnam for the plaintiff.

T.T. Durai for the defendants.

Sinnathuray J. (delivering oral judgment): Under section 3(3) of the Evidence Act, "A fact is said to be 'proved' when, after considering the matters before it, the court either believes it to exist or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists." Then sub-section 4 deals with "disproved". Finally sub-section 5 says "A fact is said to be 'not proved' when it is neither proved nor disproved."

It is not often realised that in civil cases, as much as in criminal cases, a party must prove his case before the burden of proof shifts to the other side. In a criminal case the prosecution's burden is a heavy one. In a civil case, it is on a balance of probabilities. But the proof is that the balance must be tilted by the plaintiff before the defendant makes his case.

In this case, after four days of hearing, I invited Mr. Durai for the defendants to address me this morning on the facts. He submits that the plaintiff and his material witnesses are not to be believed. Taken somewhat by surprise, as he may have been, counsel for the defendants, has nevertheless given instances from the evidence of the material witnesses to support his submission.

In reply, counsel for the plaintiff says that it is obvious that I have made up my mind on the evidence of the witnesses, and therefore he would not submit on the facts. He then submits that there is some confusion in the submission of counsel for the defendants. It is said he has overlooked the main question for decision in this case. The question is: Was there an extension of time given by the defendants? It is correct that that is the issue.

Now, in determining that issue what evidence have we got? Counsel for the plaintiff says that the credibility of witnesses is not an issue at this stage. With respect, I altogether disagree with him. Credibility of the evidence of the material witnesses is very much in issue on the question for determination. Counsel for the plaintiff contends that the evidence of the witnesses must be viewed after the consideration of the whole of the case. What Mr. Durai has submitted is that when one considers the totality of the plaintiff's

case it is clear that there is no credible evidence. I altogether agree with that submission.

It is not necessary now to deal with all the evidence or the law relating to no case to answer. As I have said, counsel for the defendants has dealt with some aspects of the evidence of the witnesses. I have taken particular care in this case to record the evidence of the plaintiff and his witnesses, almost verbatim. During the adjournments overnight I have gone through the evidence. In my judgment the plaintiff has come to court, taken the affirmation and told me deliberate lies. There is only his evidence that there had been an extension of time. I disbelieve him.

The other material witness in this case is Yusoff. I shall be brief. He ought to have been an independent witness. He ought to have come to tell the court, without any bias, of the circumstances relating to the purchase of the cars between the plaintiff and his company, Malayan Motors or its sister company, Universal Cars. But he was very much a partisan. That is why I wanted him to be here to listen to what I have to say, but he has chosen not to be in court this morning though he has not been released. In his cross-examination, it was demonstratively shown, and there are his many admissions, that his evidence-in-chief was wrong. He, too, is not to be believed.

There is only one other material witness — PW4 Gopalakrishnan. I put to Mr. Durai and asked him whether he considered him to be a tutored witness. Mr. Durai submits that he is. I saw him in the witness box, head down, and eyes down. I asked him whether he was nervous or frightened. He said: "No". That was his demeanour. Then, he gave his evidence-in-chief. He said he went to the Marco Polo Hotel on December 1, 1976. The evidence of the plaintiff was that the event described by this witness took place in January 1977. At the end of his evidence, I was asked by counsel for the plaintiff to ask the witness to clarify the matter. I reminded him of his evidence-in-chief that the plaintiff saw him about November 25 or 26, 1976. I asked him: "How long after that did you report to the Marco Polo Hotel?" Answer: "About one week later". In my judgment, that is the sort of mistake witnesses make when they come to court after having been told what to tell — to narrate facts which they have been coached. In such cases, there is always a flaw that comes to light, and in this case it was that. So, this is how I view the evidence for the plaintiff. The plaintiff is not to be believed on the issue: Was there an extension of time? And that is an issue of fact. There is no other evidence. I therefore hold that the plaintiff has not proved his case.

Accordingly, the plaintiff's case is dismissed with costs.

The following addenda was made by Sinnathuray J. on April 9, 1979:

On the subject or no case to answer, a summary of the practice of the Courts of England is to be found in the White Book at 35/7/2. The last time the practice was judicially considered is in the Court of Appeal decision *Storey* v. *Storey*.[1]

"There are, however, two sets of circumstances under which a defendant may submit that he has no case to answer. In the one case there may be a submission that, accepting the plaintiff's evidence at its face value, no case has been established in law, and in the other that the evidence led for the plaintiff is so unsatisfactory or unreliable that the court should find that the burden of proof has not been discharged."

In my judgment, it would be a desirable practice in our courts to allow a submission of no case to answer at the end of the plaintiff's case, without putting the defendant to his election, whether to call evidence or not, if his submission fails. It is trite to say that we have a young legal profession and a fused one. Most are small practitioners and engage in many fields of law. The time and effort put in litigation matters are diffused. Such a practice therefore will ensure not only that there is a thorough preparation of the case before trial, but also a careful presentation of it at the hearing. Altogether, the practice will bring about a saving of costs for the parties.

As regards the facts of the case, the only evidence that the defendants had given an extension of time to the plaintiff to provide the new cars under the contract of December 16, 1976 is the evidence of the plaintiff that one Raj, an Assistant Manager of the defendants, had told the plaintiff on December 28 or 29, 1976: "Well, we can't help it. You had better carry on". The new cars were to have been at the Marco Polo Hotel on January 1, 1977. I disbelieved the plaintiff, that Raj had in fact uttered those words. In addition, to the reasons already given, firstly, on credibility, there is the following illustration of the evidence of the glib tongue of the plaintiff:

"*Evidence-in-Chief*

Until I went to see Raj with P1 I had not seen him before. Before that I dealt with Regazzoni (General Manager of defendants)... I saw Raj towards end of December — about 28/29th December.

Cross-examination

I remember the signing of the agreement (16th December, 1976)... Raj was there... Raj took me to his room... In Raj's room certain amendments were made to the agreement. In the agreement there was no one month's notice. I insisted upon it. He (Raj) agreed and it was put in...."

Secondly, according to the plaintiff, those words of Raj were uttered by him on the occasion when the plaintiff took a Datsun car for inspection by Raj as a possible substitute for the Cortina cars the plaintiff had to provide under the contract. The following is the evidence-in-chief of the plaintiff relating to that occasion:

"I went in and got Raj out. He came out and said that he was not interested in this sort of cars. He still insisted in having the Cortinas. I told him at the moment there was no stock of the cars, the only thing is we will have to wait for it. He insisted that he still wanted the Cortina cars. Then I told him that I was able to get him two new Cortina cars in December and the balance eight I will get old Cortina cars to operate the business first. I told him that the balance of the new cars will be in January. Raj said: 'Well, we can't help it. You had better carry on'."

Now, in the context of the evidence that Raj had inspected the Datsun car, had refused to accept it and insisted that he wanted the Cortina cars, and, having regard to the totality of the evidence of the case for the plaintiff, I held that no prudent person can act on the supposition that Raj had uttered those words.

Claim dismissed.

Solicitors: *J.B. Jeyaretnam & Co.; Rodyk & Davidson.*